

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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UNITED STATES OF AMERICA,

NO.: 22-CR-40 (JRT/LIB)

Plaintiff,

v.

**MOTION TO DISMISS COUNTS  
4, 5, 6, AND 7 AS DUPLICITOUS**

STEVE ANTHONY SHAND,

Defendant.

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Steve Shand, by and through his attorneys, moves this Court to dismiss Counts 4, 5, 6, and 7 as duplicitous. All four counts are duplicitous because each count charges both attempting to transport and actual transporting an alien—“did knowingly transport and move, and attempt to transport and move”. (ECF No. 72). “Duplicity is the joining in a single count of two or more distinct and separate offenses.” *United States v. Nattier*, 127 F.3d 655, 657 (8th Cir. 1997) (quotation omitted), *cert. denied*, 523 U.S. 1065 (1998). The problem with a duplicitous indictment is that “the jury may convict a defendant without unanimous agreement on the defendant's guilt with respect to a particular offense.” *United States v. Karam*, 37 F.3d 1280, 1286 (8th Cir. 1994), *cert. denied*, 513 U.S. 1156 (1995).

In this case 8 U.S.C. §1324(a)(1)(A)(ii) specifically uses the word attempt in the statute as a means of committing the offense. As a result, the common law definition of attempt must be used which requires a showing of specific intent. *See United States v. Kenyon*, 481 F.3d 1054, 1069-70 (8th Cir. 2007). In contrast, actual transporting is a general intent crime. *See* 8 U.S.C. § 1324(a)(1)(A)(ii)(stating, “Any person who...

knowing or in reckless disregard of the fact). Thus, the elements of attempt and actual transportation are distinct creating the duplicity.

In *United States v. Ramirez-Martinez*, 273 F.3d 903, 913-14 (9th Cir. 2001), the Ninth Circuit addressed this same issue and found that “attempting to transport, which requires specific intent, and actual transportation, which requires a showing of general intent, are separate and distinct crimes.” The Ninth Circuit went on to find that charging attempt to transport and actual transporting in the same count was duplicitous. *Ramirez-Martinez*, 273 F.3d at 914. The same error is present in this case requiring dismissal.

Dated: October 28, 2024.

Respectfully submitted,

s / Aaron J. Morrison  
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